

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v-

SHAWN ARNOLD MCFADDEN,
Defendant.

No. 14-cr-212-11 (RJS)

ORDER

RICHARD J. SULLIVAN, Circuit Judge:

In a letter to the Court dated May 26, 2020, but received in Chambers on June 18, 2020, Defendant Shawn McFadden moved for release from incarceration in light of the COVID-19 pandemic, which the Court interprets as a request for compassionate release under the First Step Act of 2018, 18 U.S.C. § 3582(c)(1)(A). (Doc. No. 997.) The government opposes McFadden's motion. (Doc. No. 998.) Because McFadden has not yet exhausted his administrative remedies, his request is DENIED without prejudice.

McFadden is currently incarcerated after repeatedly failing to comply with the conditions of his supervised release. By way of background, McFadden pleaded guilty to one count of racketeering conspiracy, in violation of 18 U.S.C. § 1962(d), back in September 2014. (*See* Doc. No. 230.) In February 2015, McFadden was sentenced to 18 months' incarceration to be followed by three years' supervised release. (*See* Doc. No. 349.) He began his original term of supervised release in July 2015, and in September 2017, the Court revoked McFadden's supervised release after he admitted to five separate violations of the terms of his supervised release, including an assault on his pregnant girlfriend, failure to report to his U.S. Probation Officer, and use of controlled substances. (*See* Doc. Nos. 791, 795.) At that time, the Court

sentenced McFadden to 18 months' incarceration to be followed by 18 more months of supervised release. (*See* Doc. No. 791.)

McFadden was again released in October 2018, and in December 2019, the U.S. Probation Officer informed the Court that McFadden had failed to report to Probation and had continued to use controlled substances. (*See* Doc. No. 984.) The Court issued a warrant for McFadden's arrest, and McFadden absconded. McFadden was apprehended in January 2020, and on February 5, 2020, the Court sentenced McFadden to six months' incarceration, with no supervised release to follow. (Doc. No. 983.) He is scheduled for release on July 16, 2020.

McFadden now asks the Court for early release “[d]ue [t]o [t]his ‘Coronavirus Pandemic,’” noting that there are inmates in the MCC, where McFadden is located, who have been infected with COVID-19. (Doc. No. 997 at 2.) He states that he is “[s]cared [f]or [his] [l]ife of [c]atching [t]he [c]oronavirus [a]nd [p]ossibly [d]ying.” (*Id.*) Unlike many other defendants who have recently moved for compassionate release, McFadden does not point to any particular medical conditions or specialized circumstances that may put him at particular risk should he contract COVID-19. Moreover, according to the government, McFadden has not yet petitioned the Bureau of Prisons (“BOP”) to seek compassionate release. (Doc. No. 998 at 3.)

As the Court recently explained *United States v. Ogarro*, “section 3582(c)’s exhaustion proscription” unambiguously “mandates that where the BOP has not submitted an application for a sentence reduction, a court cannot, under any circumstances, grant compassionate release unless the defendant has either ‘fully exhausted all administrative rights to appeal’ or waited at least ‘30 days from the receipt of such a request by the warden of the defendant’s facility.’” No. 18-cr-373-9 (RJS), 2020 WL 1876300, at *6 (S.D.N.Y. Apr. 14, 2020) (quoting 18 U.S.C. §

3582(c)(1)(A)). The Court lacks the authority to waive that exhaustion requirement. *Id.* at *7–10.

Accordingly, because McFadden has failed to exhaust his available administrative remedies, his request for compassionate release is DENIED without prejudice. The Clerk of the Court is respectfully directed to mail a copy of this Order to Defendant McFadden.

SO ORDERED.

Dated: June 24, 2020
New York, New York



RICHARD J. SULLIVAN
UNITED STATES CIRCUIT JUDGE
Sitting by Designation